

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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FEEL BETTER KIDS, INC. and FBK,

Plaintiffs,

-against-

ORDER

06 CV 23 (DRH) (AKT)

KIDS IN NEED, INC., KIDS IN NEED USA, INC., CARS THAT HELP, INC., AUTO GOBBLER PARTS, INC., JOHN DOE COMPANIES fictitious names for presently unidentified entities more fully described hereinbelow, ARTHUR GLASS, in his official capacity as President of Kids In Need, Inc., ARTHUR GLASS, in his official capacity as President of Kids in Need USA, Inc., ARTHUR GLASS, in his official capacity as President of Cars That Help, Inc., and ARTHUR GLASS, individually,

Defendants.

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HURLEY, Senior District Judge:

Plaintiffs Feel Better Kids, Inc. and FBK (“plaintiffs”) commenced this trademark infringement action against defendants Kids in Need, Inc., Kids in Need USA, Inc. (together, “Kids In Need”), Cars That Help, Inc. (“Cars That Help”), and Arthur Glass (“Glass”) both individually and in his official capacities as president of Kids In Need and Cars That Help (collectively, the “Glass Defendants”). Auto Gobbler Parts, Inc. (“Auto Gobbler”) was also named as a defendant, though plaintiffs’ claims against Auto Gobbler were previously dismissed with prejudice.

The Glass Defendants initially appeared through counsel, but never filed an Answer or otherwise responded to the Complaint. On April 16, 2007, plaintiffs moved for a default judgment as against Glass Defendants. (Docket No. 23.) Thereafter, the Court referred the

matter to Magistrate Judge A. Kathleen Tomlinson “to report and recommend on plaintiffs’ motion for a default judgment.” (Docket No. 29.) On August 28, 2012, Judge Tomlinson issued a Report and Recommendation stating that plaintiffs “are entitled to a default judgment against the Glass Defendants on the claims that are properly alleged in the Complaint,” to wit: (1) Count I (trademark infringement under the Lanham Act), (2) Count II (false designation of origin under the Lanham Act), (3) Count IV (false advertising under the Lanham Act), and (4) Count VII (common law trademark infringement). Judge Tomlinson further recommended that plaintiffs are “entitled to a default judgment on Count VIII (breach of contract) against Defendants Kids In Need and Cars That Help.” (Docket No. 41 at 21.) Neither plaintiffs nor the Glass Defendants filed any objections thereto, and on September 27, 2012 the Court adopted Judge Tomlinson’s Report and Recommendation and pursuant to 28 U.S.C. § 636(b)(3) referred the matter to Judge Tomlinson for an inquest on damages and attorneys’ fees. (*See* Docket No. 42.)

On November 28, 2012, Judge Tomlinson issued an Order directing Plaintiffs to submit documentation on the issue of damages by December 31, 2012, but the plaintiffs did not respond or provide any documentation. (*See* Docket No. 44.) Thereafter Judge Tomlinson extended the plaintiffs’ time to provide the documentation to January 7, 2013, but again the plaintiffs did not comply. As a result, on May 20, 2013, Judge Tomlinson issued a Report and Recommendation which recommended that “no damages be awarded to Plaintiffs in this matter” because they “failed to submit any evidence in support of their damages claim despite the Court’s repeated requests.” (Docket No. 45.) More than fourteen days have elapsed since service of the Report and Recommendation and no party has filed an objection.

Pursuant to 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72, this Court has reviewed the Report and Recommendation for clear error, and finding none, now concurs in both

its reasoning and its result. Accordingly, the Court adopts Judge Tomlinson's May 20, 2013 Report and Recommendation as set forth herein. Accordingly, the Court hereby directs that plaintiffs recover zero damages from defendants and that judgment be entered accordingly. The clerk is directed to close this case.

SO ORDERED.

Dated: Central Islip, New York
June 11, 2013

_____/s/
Denis R. Hurley
United States District Judge